

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 CENTRAL PUGET SOUND REGION
3 STATE OF WASHINGTON
4

5 LAKE BURIEN NEIGHBORHOOD AND
6 ROBERT HOWELL, ROBBIE HOWELL,
7 CHESTINE EDGAR, LEN BOSCARINE, AND
8 LINDA PLEIN,

9 Petitioner,

10 v.

11 THE CITY OF BURIEN
12

13 and
14

15 THE DEPARTMENT OF ECOLOGY,
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17 Respondents.
18

19 **SYNOPSIS**

20 On June 3, 2013, the City of Burien adopted Ordinance 518 (the Ordinance),
21 updating its Shoreline Master Program. The Department of Ecology gave its final approval
22 of the Ordinance on October 3, 2013. Petitioners challenged provisions of the City's public
23 participation process leading up to adoption of the Ordinance, and provisions of the
24 Ordinance relating to, *inter alia*, zoning density and buffers on the shoreline of Lake Burien
25 for inconsistency with GMA, failure to use best available science, and failure to insure "no
26 net loss" of ecological functions.
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28 The Board determined that Petitioners' issues were in part a collateral attack on the
29 City's previously adopted zoning and critical areas ordinance; issues which were dismissed
30 as untimely. The petitioners failed to meet their burden of proof on the remaining issues,
31 and the case was dismissed.
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I. PROCEDURAL BACKGROUND

Petitioners are residents around Lake Burien concerned about the process and provisions of the City of Burien's updated Shoreline Master Program (SMP). Their timely challenge was received on December 6, 2013, and a Prehearing Conference was held on January 17, 2013, with all parties and Board members present telephonically. The parties agreed that the shorelines of Lake Burien involved in this case are not shorelines of statewide significance.¹ At the request of the Board, Petitioners subsequently filed revised issue statements on January 27, 2013. By agreement of the parties, a Settlement Officer met with the parties on February 13, 2014. The parties being unable to resolve their dispute in conference, they filed motions and briefs, as follows:

- Petitioners' Motion to Supplement the Record, March 3, 2014 (granted in part),²
- City's Response to Petitioners' Motion to Supplement, March 13, 2014;
- Ecology's Response to Petitioners' Motion to Supplement, March 13, 2014;
- Petitioners' Pre-Hearing Brief, March 26, 2014,
- Petitioners' Motion to Amend Prehearing Brief, April 3, 2014 (denied);³
- City's Response to Petitioners' Motion to Amend, April 11, 2014;
- Ecology's Response to Petitioners' Motion to Amend, April 13, 2014;
- Ecology's Response Brief, April 18, 2014;
- City's Response Brief, April 21, 2014;
- City's Motion to Supplement the Record, April 21, 2014 (granted);⁴
- Petitioners' Response to City's Motion to Supplement, April 23, 2014;
- Petitioners' Reply to Ecology's Response, April 28, 2014;
- Petitioners' Reply to City's Response, April 28, 2014.

The Hearing on the Merits was convened June 30, 2014, at the Burien City Hall. Present for the Board were Cheryl Pflug, presiding officer, Margaret Pageler and Charles

¹ Prehearing Order (January 30, 2014) at 2; Respondent City of Burien's Prehearing Brief at 5.

² Order on Motion to Supplement the Record, Case no. 13-3-0012 (March 18, 2014).

³ Order on Motion to Amend Prehearing Brief, Case no. 13-3-0012 (April 11, 2014).

⁴ Granted by Oral Board ruling at the Hearing on the Merits (April 30, 2014).

1 Mosher. Chestine Edgar appeared on behalf of the petitioners. Also present were Robert
2 Howell, Robbie Howell, Len Boscarine and Linda Plein. Respondent City of Burien was
3 represented by its attorney Ann Marie Soto and Assistant Attorney General Christopher
4 Reitz appeared on behalf of Ecology. Mary Ann Pennington from Pennington Court
5 Reporting provided court reporting services.

6
7 The hearing provided the Board an opportunity to ask questions clarifying important
8 facts in the case and providing better understanding of the legal arguments of the parties.

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10 **II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF,**
11 **AND STANDARD OF REVIEW**

12 The Board is charged with adjudicating GMA compliance and, when necessary,
13 invalidating noncompliant plans and development regulations.⁵ The Board reviews a
14 shoreline master program or amendment solely for compliance with the requirements of the
15 Shoreline Management Act (SMA),⁶ the Department of Ecology's shoreline master program
16 guidelines,⁷ the internal consistency requirements of the Growth Management Act (GMA),⁸
17 consistency between the city's comprehensive plan (Comp Plan) and its development
18 regulations,⁹ and SEPA¹⁰ as it relates to the adoption of master programs and amendments
19 under chapter 90.58 RCW.¹¹

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21 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations,
22 and amendments to them, are presumed valid upon adoption.¹² This presumption creates a
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27 ⁵ RCW 36.70A.280, RCW 36.70A.302.

28 ⁶ RCW 90.58.

29 ⁷ RCW 98.58.020.

30 ⁸ RCW 36.70A.

31 ⁹ RCW 35.63.15 and 35A.63.105.

32 ¹⁰ RCW 43.21C.

¹¹ RCW 90.58.190(2)(b).

¹² RCW 36.70A.320(1) provides: [Except for the shoreline element of a comprehensive plan and applicable development regulations] "comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption."

1 high threshold for challengers as the burden is on the petitioners to demonstrate that any
2 action taken by the County is not in compliance with the GMA.¹³

3 The burden of proof is on the petitioners.¹⁴ In reviewing SMP provisions for a
4 shoreline not of statewide significance, the Board will uphold the City's and Ecology's action
5 unless it determines that it is clearly erroneous in view of the entire record before the Board
6 and in light of the goals and requirements of the SMA¹⁵ and the GMA.¹⁶ The Board shall
7 find compliance unless it determines that the City's action is clearly erroneous in view of the
8 entire record before the Board and in light of the goals and requirements of the GMA.¹⁷ In
9 order to find the City's action clearly erroneous, the Board must be "left with the firm and
10 definite conviction that a mistake has been made."¹⁸

11 The Board's review on an SMP includes a determination of compliance with the
12 applicable guidelines. RCW 90.58.190(2)(b) and (c). Pursuant to RCW 90.58.200 Ecology
13 has adopted guidelines to assist jurisdictions in the development of their SMPs. Ecology's
14 SMP regulations are found at WAC 173-26 (hereafter, SMP guidelines). Deference to
15 Ecology's interpretation of the SMP guidelines is appropriate because WAC 173-26 is
16 Ecology's own regulation. *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 86, 11
17 P.3d 726 (2000).

18 In reviewing the planning decisions of cities and counties, the Board is instructed to
19 recognize "the broad range of discretion that may be exercised by counties and cities" and
20 to "grant deference to counties and cities in how they plan for growth."¹⁹ However, the city's
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25 ¹³ RCW 36.70A.320(2) provides: [Except when city or county is subject to a Determination of Invalidity]" the
26 burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this
27 chapter is not in compliance with the requirements of this chapter."

28 ¹⁴ RCW 90.58.190(2)(d).

29 ¹⁵ RCW 90.58.190(2)(a).

30 ¹⁶ RCW 36.70A.320(3).

31 ¹⁷ RCW 36.70A.320(3).

32 ¹⁸ *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008)(Citing to *Dept. of Ecology v. PUD District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); *See also, Swinomish Tribe v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006).

¹⁹ RCW 36.70A.3201 provides, in relevant part: "In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the

1 actions are not boundless; their actions must be consistent with the goals and requirements
2 of the GMA.²⁰

3 Thus, the burden is on Petitioners to overcome the presumption of validity and
4 demonstrate that the SMP adopted by the City and approved by Ecology is clearly
5 erroneous in light of the goals and requirements of the GMA.
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7 8 **III. BOARD JURISDICTION**

9 The Board finds the Petition for Review was timely filed, pursuant to RCW
10 36.70A.290(2). The Board finds the Petitioners have standing to appear before the Board,
11 pursuant to RCW 36.70A.280(2) (b). The Board finds it has jurisdiction over the subject
12 matter of the petition pursuant to RCW 36.70A.280(1).
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14 **IV. PRELIMINARY MATTERS**

15 The hearing began with argument on the City's Motion to Supplement. Pursuant to
16 WAC 242-03-565(1),²¹ the Board ruled orally that the City's proposed exhibits would be
17 admitted.²²

18 In their response briefs, both Ecology and the City point out that *pro se* Petitioners
19 have failed to articulate adequate legal arguments in support of their challenge.²³ In other
20 words, they have not shown how a specific GMA or SMA provision applies to the specific
21 facts in the record such that the Board is left with the "firm and definite conviction that a
22 mistake has been made."²⁴ The City correctly points out that the "Board cannot make a
23 ruling on a blanket assertion that 'numerous important inconsistencies' exist".²⁵ Ordinarily,
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26 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements
27 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities
28 to balance priorities and options for action in full consideration of local circumstances. The legislature finds that
29 while this chapter requires local planning to take place within a framework of state goals and requirements, the
ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and
implementing a county's or city's future rests with that community."

30 ²⁰ *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000) (Local discretion is bounded by the
31 goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the
32 degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: "The
amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give
the [jurisdiction's] actions a 'critical review' and is a "more intense standard of review" than the arbitrary and
capricious standard." *Id.*, at 435, n.8.

1 failure to adequately brief and argue issues will cause the Board to dismiss the petition,²⁶
2 but under the unique circumstances of this case we proceed to consider what appears to be
3 the crux of the Petitioners' concerns.

4 5 **V. ISSUES AND DISCUSSION**

6 **Background**

7 When the City of Burien incorporated in 1993, it adopted King County's existing SMP
8 by reference, which included no vegetative buffers and provided only a limited 20 foot
9 setback for single-family homes.²⁷ The Land Use Map, adopted June 7, 1999, designated
10 the Lake Burien area as Moderate Density Single Family Residential.²⁸ On October 20,
11 2003, the City adopted its Critical Areas Ordinance (CAO). These actions were not
12 appealed.
13

14 In 2007, the City began the process of updating its SMP as required by RCW
15 90.58.080²⁹ and Ecology's guidelines.³⁰ The City first adopted an SMP on March 30, 2010
16 through Resolution 317.³¹ After Ecology conducted a public hearing and comment period,
17 the Department sent the City a summary of the comments received from over 50 individuals
18 and organizations and a notice of approval with both recommended and required changes
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22 ²¹ WAC 242-03-565(1) states: "The board may allow a later motion for supplementation on rebuttal ..."

23 ²² Burien's Motion to Supplement, Ex. A.

24 ²³ Ecology's Response to Petitioners' Prehearing Brief at 6-7; Respondent City of Burien's Prehearing Brief at
25 11-2.

26 ²⁴ Appendix A (Burden of Proof Standards), Prehearing Order (January 30, 2014) at 9 (citing *Dep't of Ecology*
v. PUD 1, 121 Wn.2d 179, 201, 849 P.2d 646 (1993)).

27 ²⁵ Petitioners' Prehearing Brief at 19.

28 ²⁶ "Petitioner, as the party with the burden of proof, cannot simply refer in general terms to a statute or
29 regulation as having been violated. Rather, Petitioner must come forward with evidence and specific legal
30 arguments relating to the statute or regulation in an attempt to satisfy Petitioner's burden of proof."
Confederated Tribes and Bands of the Yakama Nation v. Yakima County, Final Decision and Order, GMHB
31 10-1-0011 (April 4, 2011) at 26-27.

32 ²⁷ COB Exhibit 1: Title 25 King County Shoreline Management Program, at 1026

²⁸ *Edgar v. City of Burien*, GMHB Case No. 11-3-0004, Order On Motion to Dismiss (May 12, 2011), at 3.

²⁹ Timetable for local governments to develop or amend master programs.

³⁰ ECY Ex. 032: Attachment A: Findings and Conclusions - Revised at 1.

³¹ ECY Ex. 032: Attachment A: Findings and Conclusions - Revised at 1.

1 on April 22, 2011.³² Most of the comments reportedly pertained to marine setbacks but
2 some addressed public access to Lake Burien.³³

3 Between the time the City passed Resolution 317 and the time Ecology sent a notice
4 of conditional approval, the City passed Ordinance 551, amending Burien's Comp Plan. A
5 proposed Amendment, filed on June 1, 2010, by Chestine Edgar and other Lake Burien
6 neighbors, sought to amend the land use designation (from Moderate Density Single Family
7 Residential to Low Density Single Family Residential) and zoning (from RS-7200 to RS-
8 12000) in the Lake Burien area but was not adopted.³⁴ The proponents of the failed
9 amendment subsequently filed a challenge to Ordinance 551 with the GMHB, articulating
10 violations such as inadequate public participation and failure to use best available science
11 (BAS) to insure no net loss.³⁵ After finding that the petition was untimely because it was
12 essentially challenging a 1999 zoning action,³⁶ the Board dismissed the case on other
13 grounds on May 12, 2011.³⁷

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16 Two weeks later, the City of Burien responded to Ecology, accepting most of the
17 Department's suggested changes, proposing some alternative language and disputing
18 some required changes.³⁸ When the City refused to negotiate with Ecology over required
19 changes, Ecology began planning for the rule adoption process.³⁹ A City Councilmember
20 approached Ecology with the idea of forming a "Shoreline Working Group" (SWG) to resolve
21 the impasse.⁴⁰ At Ecology's suggestion, the City withdrew its May 25, 2011, letter and the
22 SWG, consisting of four citizens and a councilmember, began meeting regularly and
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28 ³² ECY Ex. 032: Attachment A: Findings and Conclusions - Revised 518 at 2.

29 ³³ ECY Ex. 032: Attachment A: Findings and Conclusions - Revised at 3-4.

30 ³⁴ *Edgar v. City of Burien*, GMHB Case No. 11-3-0004, Order On Motion to Dismiss (May 12, 2011) at 2.

31 ³⁵ *Edgar v. City of Burien*, GMHB Case No. 11-3-0004, Order On Motion to Dismiss (May 12, 2011) at 7.

32 ³⁶ *Edgar v. City of Burien*, GMHB Case No. 11-3-0004, Order On Motion to Dismiss (May 12, 2011) at 5.

³⁷ *Edgar v. City of Burien*, GMHB Case No. 11-3-0004, Order On Motion to Dismiss (May 12, 2011) at 6-8.

³⁸ ECY Ex. 032: Attachment A: Findings and Conclusions - Revised at 2.

³⁹ ECY Ex. 032: Attachment A: Findings and Conclusions - Revised at 2.

⁴⁰ ECY Ex. 032: Attachment A: Findings and Conclusions - Revised at 2.

1 conferring with Ecology.⁴¹ Most of the 18-month process was devoted to developing
2 alternative marine shoreline buffers.⁴²

3 On May 6, 2013, the City held a public hearing on Ordinance 518, a revised SMP
4 incorporating the changes recommended by the SWG, and subsequently adopted the
5 Ordinance on June 10, 2013.⁴³ Ecology issued its final approval of Burien's updated SMP
6 on October 3, 2013,⁴⁴ making it effective October 17, 2013. On December 16, 2013,
7 Petitioners filed the instant challenge to the City's public participation process leading up to
8 adoption of the Ordinance, and provisions of the Ordinance relating to, *inter alia*, zoning
9 density, impervious surfaces, and buffers on the shoreline of Lake Burien for inconsistency
10 with GMA, failure to use best available science and failure to insure "no net loss" of
11 ecological functions.⁴⁵

12 The petitioners' legal issues as presented in the Petition for Review may be found in
13 Attachment A.⁴⁶ To clarify its analysis, the Board considers the legal issues by category as
14 discussed in the briefs of the parties.
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18 **Issue 1 Do the City's SMP and pertinent maps fail to satisfy consistency**
19 **requirements?**

20 In briefing the issue of inconsistency, Petitioners' allege that "numerous important
21 inconsistencies" exist between the newly adopted SMP and Burien's Comp Plan, as well as
22 "within the SMP itself."⁴⁷ Petitioners cite generally to the entire SMA⁴⁸ and WAC 173-26-
23 211, which "applies to the establishment of environment designation boundaries and
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28 ⁴¹ ECY Ex. 032: Attachment A: Findings and Conclusions - Revised at 2.

29 ⁴² ECY Ex. 032: Attachment A: Findings and Conclusions - Revised at 2.

30 ⁴³ ECY Ex. 032: Attachment A: Findings and Conclusions - Revised at 2.

31 ⁴⁴ ECY Exhibit 039: Final Ecology Approval of Burien SMP update, Ordinance 518

32 ⁴⁵ Petition For Review (December 16, 2013).

⁴⁶ Attachment A.

⁴⁷ Petitioners' Prehearing Brief, at 19.

⁴⁸ RCW 90.58; Petitioners' Prehearing Brief, at 19.

1 provisions” of shoreline master programs.⁴⁹ Next, Petitioners discuss three examples of
2 perceived inconsistency.

3 Example 1 pertains to Petitioners’ conviction that the 2003 CAO was not based on
4 BAS⁵⁰ and, as discussed in more detail below, the CAO is not subject to timely challenge in
5 2014.⁵¹ In Example 2, Petitioners complain that the criteria for designation of residential
6 shorelines in the SMP is inconsistent with the Comp Plan because the Comp Plan applies
7 “moderate density” residential zoning to Lake Burien and “low density” residential zoning to
8 marine shorelines.⁵² As with Example 1, a present challenge to zoning designations
9 adopted in 1999 is not timely. Example 3 appears to have been omitted from the brief.
10 Petitioners’ Example 4 alleges that the planning metric and alternative strategy assign
11 “arbitrary numbers”⁵³ but offers no evidence beyond Petitioners opinion that the numbers
12 are “difficult to understand” to support that conclusion or the proposition that the planning
13 metric is “inconsistent.”⁵⁴ Example 5 reiterates that “inconsistencies exist” as a result of the
14 way the CAO and zoning maps were developed,⁵⁵ again issues not timely before the Board.
15

16
17 **The Board finds** that Petitioners’ challenges to the adopted CAO and zoning
18 designations are untimely.

19 **The Board finds** that Petitioners have not carried their burden to show that the
20 planning metric and alternative strategy create inconsistencies between the SMP and Comp
21 Plan in violation of GMA or SMA.
22

23 **Issue 1 is dismissed.**
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27 ⁴⁹ WAC 173-26-191.

28 ⁵⁰ Petitioners’ Prehearing Brief, at 19-20.

29 ⁵¹ WAC 242-3-220 reads: “(1) A petition relating to whether or not an adopted comprehensive plan,
30 development regulation, or subsequent amendment, is in compliance with the goals and requirements of the
31 act or chapter 90.58 or 43.21C RCW shall be filed with the board within sixty days from the date of publication
32 by the legislative body of the county or city as specified by RCW 36.70A.290(2).”

⁵² Petitioners’ Prehearing Brief at 20-21.

⁵³ Petitioners’ Prehearing Brief at 22.

⁵⁴ Petitioners’ Prehearing Brief at 22.

⁵⁵ Petitioners’ Prehearing Brief at 22-23.

1 **Issues 2, 4 &6: Failure to use best available science to insure “no net loss” in**
2 **establishing land use, density, shoreline buffers and impact mitigation**

3 **Best Available Science**
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5 Throughout their brief and replies, Petitioners are highly critical of the City's and
6 Department's failure to use BAS as required by GMA.⁵⁶ Ecology responds that the use of
7 BAS is not the standard applicable to SMP development and that Burien's SMP is
8 supported with appropriate scientific and technical information.⁵⁷ Petitioners argue that BAS
9 is required to adopt a CAO and the City's 2003 CAO is incorporated into the SMP. From
10 there Petitioners seem to conclude that this either reopens the CAO to a challenge for
11 failure to use BAS or makes the use of BAS the standard by which the SMP must be
12 evaluated. As explained below, Petitioners' theories are incorrect.
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15 **Board discussion and analysis**

16 Under RCW 36.70A.172, GMA requires the use of “best available science” (BAS)
17 when designating and protecting critical areas. The focus of the BAS regulation is to
18 distinguish between “scientific” information that is likely to be reliable, as opposed to
19 information from less reliable sources. See WAC 365-195-905(5)(c) (listing common
20 sources of scientific and unscientific information).
21

22 SMA requirements under RCW 90.58.100(1) are similar to the requirement to use
23 BAS under the GMA, but the SMA mandates the use of “a systematic interdisciplinary
24 approach which will insure the integrated use of natural and social sciences and
25 environmental design arts”⁵⁸ rather than identifying what information is to be considered
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28 ⁵⁶ Petitioners' Prehearing Brief at 3-13; Petitioners' Reply to Ecology at 3-5.

29 ⁵⁷ Ecology's Response to Petitioners' Prehearing Brief at 7-9.

30 ⁵⁸ RCW 90.58.100(1) reads:

31 (1) The master programs provided for in this chapter, when adopted or approved by the department shall
32 constitute use regulations for the various shorelines of the state. In preparing the master programs, and
any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural
and social sciences and the environmental design arts;

1 reliable.⁵⁹ The SMA process does incorporate the use of scientific information, but it does
2 so as part of the process of balancing a range of considerations such as public access,
3 priority uses, and the development goals and aspirations of the community. See WAC 173-
4 26-110(3).

5 BAS may be a key factor as applied to the protection of critical areas under RCW
6 36.70A.172, but the standard set out in RCW 90.58.100 for the development of SMPs is the
7 applicable standard here. Burien's 2003 Critical Areas Ordinance (CAO), as incorporated, is
8 subject to review in this case, but the scope of review is limited to compliance with the SMA
9 and Ecology's Guidelines⁶⁰ so that Petitioners may not now argue the City's 2003 CAO was
10 not supported by BAS or challenge various characterizations of Lake Burien's wetlands over
11 the history of Burien's CAO and associated map.⁶¹ The time period for challenging that
12 action is long past.

13
14 Although this alone is dispositive of the BAS issue in the case before us, the Board
15 notes that even if BAS was at issue, more would be required for Petitioners to prevail than
16 merely questioning the validity of the Department's or City's use of science. It is not enough
17 to merely assert that one expert disagreed with another or that the petitioners believed the
18 science used to be somehow flawed. To meet the "clearly erroneous" standard a petitioner
19 must show that the best available science was not included in developing policies and
20 development regulations to protect the functions and values of critical areas,⁶² e.g. by
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23
24 (b) Consult with and obtain the comments of any federal, state, regional, or local agency having
25 any special expertise with respect to any environmental impact;

26 (c) Consider all plans, studies, surveys, inventories, and systems of classification made or being
27 made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing
28 with pertinent shorelines of the state;

29 (d) Conduct or support such further research, studies, surveys, and interviews as are deemed
30 necessary;

31 (e) Utilize all available information regarding hydrology, geography, topography, ecology,
32 economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer
techniques to store, index, analyze, and manage the information gathered.

⁵⁹ RCW 90.58.100.

⁶⁰ RCW 90.58.190(2)(b),

⁶¹ Ecology's Prehearing Brief, at 12-13.

⁶² RCW 36.70A.172.

1 showing that scientific information was not used or by showing that better scientific
2 information was available to the agency and disregarded. Petitioners have not shown that
3 Burien's SMP is not properly supported by technical and scientific information.

4 **The Board finds** that Petitioners may not now challenge the use of BAS in the
5 Critical Areas Ordinance adopted in 2003.
6

7
8 Buffers

9 Interwoven with Petitioners' concerns about BAS and the 2003 CAO are their
10 assertions that shoreline buffers and setbacks are inadequate.⁶³ Ecology explains:

11 Petitioners appear to think that zones 1 and 2 of the 45 foot continuous
12 shoreline buffer applicable to Lake Burien under BMC 20.30.050 and
13 20.30.055 are the only buffers that protect critical areas such as the wetlands
14 on the perimeter of Lake Burien. See SMP IV-18 to -24. Petitioners appear
15 to conflate the shoreline buffer with the additional, independent wetland
16 buffer, which is included in the SMP's CAO provision. SMP IV-9; BMC
20.30.025(2)(b)-(d).

17 ***

18 To the contrary, Ecology asserts that under sections (b) and (c) of the wetland buffer
19 scheme, regardless of how Lake Burien wetlands were generally listed on the 2003 CAO
20 map, specific wetlands on any given property will need to be delineated, characterized, or
21 categorized at the project level and appropriate wetland buffers will attach based on actual
22 wetland quality. Additionally, wetland and shoreline buffers on Lake Burien are enhanced by
23 other environmentally protective provisions of the Burien SMP such as the 150 foot
24 vegetation conservation zone under SMP II-16; BMC 20.30.040 and .050, mitigation
25 sequencing under II-9; BMC 20.30.10, and the restoration provision of IV-30; BMC
26 20.30.080.⁶⁴ "Together these multiple buffers and protective provisions ensure no net loss
27 throughout Burien's shoreline jurisdiction."⁶⁵
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31 ⁶³ Petitioners' Prehearing Brief at 3-13.

32 ⁶⁴ Ecology's Prehearing Brief at 12-15.

⁶⁵ Ecology's Prehearing Brief at 15.

1 **Board discussion and analysis**

2 Petitioners' concerns again revolve around BAS and the CAO, neither of which are
3 subject to challenge, and do not give credit to the additive impact of the buffer and wetland
4 schemes. The Board finds the multiple buffers and other provisions highlighted by Ecology
5 address the protections required by the SMA. Petitioners present no evidence that the
6 shoreline and wetland buffer provisions adopted in the challenged Ordinance fail to comply
7 with applicable provisions of GMA or SMA.
8

9 **The Board finds** that Petitioners have not met their burden to show how the
10 shoreline buffer and wetlands provisions of the SMP violate GMA or SMA.
11

12 No Net Loss

13 Petitioners allege that the SMP technical documents fail to accurately document
14 baseline environmental conditions as required by WAC 173-26-201.⁶⁶ Ecology offers up the
15

16 ⁶⁶ Petitioner's Prehearing brief at 23-24. WAC 173-26-201(2)(a) provides in pertinent part:

17 To satisfy the requirements for the use of scientific and technical information in RCW 90.58.100(1),
18 local governments shall incorporate the following two steps into their master program development
19 and amendment process.

20 First, identify and assemble the most current, accurate, and complete scientific and technical
21 information available that is applicable to the issues of concern. The context, scope, magnitude,
22 significance, and potential limitations of the scientific information should be considered. At a minimum,
23 make use of and, where applicable, incorporate all available scientific information, aerial photography,
24 inventory data, technical assistance materials, manuals and services from reliable sources of science.
25 Local governments should also contact relevant state agencies, universities, affected Indian tribes,
26 port districts and private parties for available information. While adequate scientific information and
27 methodology necessary for development of a master program should be available, if any person,
28 including local government, chooses to initiate scientific research with the expectation that it will be
29 used as a basis for master program provisions, that research shall use accepted scientific methods,
30 research procedures and review protocols. Local governments are encouraged to work interactively
31 with neighboring jurisdictions, state resource agencies, affected Indian tribes, and other local
32 government entities such as port districts to address technical issues beyond the scope of existing
information resources or locally initiated research.

Local governments should consult the technical assistance materials produced by the department.
When relevant information is available and unless there is more current or specific information
available, those technical assistance materials shall constitute an element of scientific and technical
information as defined in these guidelines and the use of which is required by the act.

Second, base master program provisions on an analysis incorporating the most current, accurate, and
complete scientific or technical information available. Local governments should be prepared to
identify the following:

(i) Scientific information and management recommendations on which the master program provisions
are based;

1 report from Herrera Environmental Consultants dated March 16, 2010, summarizing the
2 physical, water quality, aquatic plant, and fish and wildlife conditions in Lake Burien.⁶⁷

3 The report identifies the principal water quality concern for Lake Burien as
4 eutrophication (nutrient loading leading to algae blooms) and the primary
5 cause of eutrophication as phosphorus from stormwater runoff.⁶⁸ The report
6 goes on to summarize available water quality data on Lake Burien in terms of
7 total phosphorus, chlorophyll a, phytoplankton, Secchi depth (a measure of
8 turbidity), trophic state index, and to describe the lake's aquatic plants and
9 fish and wildlife populations.⁶⁹ This detailed report, solely focused on Lake
10 Burien, documents baseline conditions for the purpose of tracking no net
11 loss.⁷⁰

11 Petitioners' next point to degraded conditions in and around Lake Burien as evidence
12 that the SMP does not ensure no net loss, opining that "these issues are causing net loss to
13 the wetlands and water quality of the Lake" ⁷¹ They also cite the Cooke report,⁷² in
14 which the author suggests that allowing public access to the lake could introduce invasive
15 species or negatively impact water quality, as evidence that the SMP does not ensure "no
16 net loss" of ecological function.

17 Ecology explains that object of "no net loss" requirements is that over time the
18 existing condition of shoreline ecological functions throughout a jurisdiction should remain
19 the same as when an SMP is first implemented.⁷³

-
- 22 (ii) Assumptions made concerning, and data gaps in, the scientific information; and
23 (iii) Risks to ecological functions associated with master program provisions. Address potential risks as
24 described in WAC 173-26-201 (3)(d).

25 The requirement to use scientific and technical information in these guidelines does not limit a local
26 jurisdiction's authority to solicit and incorporate information, experience, and anecdotal evidence
27 provided by interested parties as part of the master program amendment process. Such information
28 should be solicited through the public participation process described in WAC 173-26-201 (3)(b).
29 Where information collected by or provided to local governments conflicts or is inconsistent, the local
30 government shall base master program provisions on a reasoned, objective evaluation of the relative
31 merits of the conflicting data.

32 ⁶⁷ Ecology's Response to Petitioners' Prehearing Brief, at 17.

⁶⁸ SMP, Appendix 5(a), at 2.

⁶⁹ SMP, Appendix 5(a), at 2-8.

⁷⁰ Ecology's Response to Petitioners' Prehearing Brief at 18.

⁷¹ Petitioners Prehearing Brief, at 23.

⁷² Petitioners' Reply to Ecology, at 3-5.

⁷³ Ecology's Response to Petitioners' Prehearing Brief, at 8.

1 "Simply stated, the no net loss standard is designed to halt the introduction of
2 new impacts to shoreline ecological functions resulting from new
3 development. . . . Local governments must achieve this standard through
4 both the SMP planning process and by appropriately regulating individual
developments as they are proposed in the future."⁷⁴

5 Thus, SMP development essentially takes the shoreline as it stands at the beginning
6 of the SMP process, and aims to preserve ecological function on a jurisdiction-wide basis
7 over the long term.⁷⁵ Even though a development project in one area of the City may result
8 in shoreline impacts, those impacts can be offset by restoration activity in another area of
9 shoreline jurisdiction to result in no net loss.⁷⁶

11 In the present case, Ecology asserts that the no net loss requirement is ensured by
12 the following SMP provisions: (1) environment designations including urban conservancy
13 and shoreline residential (SMP III-1 to -5; BMC 20.25.001 to .025); (2) a system of dual
14 zoned vegetative buffers ranging from 35 to 150 feet for all shorelines with a 45 foot buffer
15 around Lake Burien (SMP IV-18 to -24; BMC 20.30.050 and .055); (3) a 150 to 200 foot
16 vegetation conservation zone (SMP IV-14 to -16 and IV-18 to -20; BMC 20.30.040 and
17 .050); (4) wetland buffers from Ecology's wetlands guidance document ranging from 25 to
18 300 feet depending on land use and wetland functions (SMP IV-9; BMC 20.30.025(2)(b)-(d)
19 and ECY-000228, App. 8-C (*Wetland in Washington State Volume 2: Guidance for*
20 *Protecting and Managing Wetlands FINAL April 2005 Ecology Publication #05-06-008*)); (5)
21 an impact mitigation provision requiring mitigation sequencing to prioritize the most effective
22 forms of mitigation (SMP IV-4 to -5; BMC 20.30.010); and (6) a habitat restoration and
23 enhancement plan (SMP IV-32 to -34; BMC 20.30.080).⁷⁷

31 ⁷⁴ Ex. ECY-000250, at ch. 4, p. 1.

32 ⁷⁵ Ecology's Prehearing Brief, at 8.

⁷⁶ ECY-000250, at ch. 4, 2-5.

⁷⁷ Ecology's Prehearing Brief, at 8-9.

1 **Board discussion and analysis**

2 The Board notes that the Herrera report was prepared for the Lake Burien Shore
3 Club⁷⁸ and includes a list of observed phytoplankton species compiled by Christine Edgar in
4 2010.⁷⁹ Several other appendices to the SMP evince technical and scientific data. Appendix
5 2(a) is the April 2013 update prepared by Grette Associates as a supplement to their 2008
6 Shoreline Analysis and Characterization report as a basis for Burien's SMP update
7 process.⁸⁰ Appendix 5(b) to the SMP is the report commissioned by the Lake Burien Shore
8 Club in March 2010 from Cooke Scientific. The Board observes that Petitioners' complaints
9 of toxic algae blooms⁸¹ and flooding in and around Lake Burien⁸² do not show evidence
10 predictive of net loss as much as they confirm that the baseline for measuring no net loss
11 regarding Lake Burien is a significantly degraded habitat,⁸³ a status that agrees with the
12 Herrera report.
13

14 **The Board finds** that Petitioners have not carried their burden to show a failure to
15 adequately document baseline conditions in and around Lake Burien.
16

17 Environmental designations and other SMP provisions must assure "no net loss" of
18 ecological functions over time. WAC 173-26-186(8); WAC 173-26-201(2)(c). As discussed
19 during the Prehearing Conference and *supra*, the burden of proof falls to Petitioners to show
20 that the Ordinance violates GMA or SMA.⁸⁴ Thus Petitioners' assertion that it is not their
21 burden to show "that the SMP will lead to a net loss" in ecological function⁸⁵ is incorrect.
22 That is precisely what a challenger must show in order to prove that the policies and
23 regulations are not adequate to assure no net loss.
24
25
26

27 ⁷⁸ SMP, Appendix 5(a) at 1.

28 ⁷⁹ SMP Appendix 5(a) at 5.

29 ⁸⁰ SMP Appendix 2 at 1.

30 ⁸¹ Petitioners' Prehearing Brief at 19.

31 ⁸² Ex. 646.

32 ⁸³ Ecology's Prehearing Brief at 17.

⁸⁴ RCW 36.70A.320(2) provides: [Except when city or county is subject to a Determination of Invalidity] "the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter."

⁸⁵ Petitioners' Reply to Ecology, at 1-3.

1 It is clear that Petitioners have little faith in the SMP's ability to preserve ecological
2 function, but Petitioners have not offered any explanation as to how the policies,
3 regulations, and mitigation provisions contained therein will fail to do so. At the most basic
4 level, Petitioners' distrust of the 2003 CAO and the City's refusal to rezone Lake Burien to
5 low density residential seem to give rise to Petitioner's belief that loss of ecological function
6 is inevitable. Reviewing the chronology of the SMP process, the Board wonders if the City's
7 decision to restrict access to the Shoreline Working Group, the very short timeline for public
8 comment prior to adoption of the revised SMP, and the apparent failure of the City to reach
9 out to Lake Burien residents with detailed explanations as to the interaction between various
10 policies and regulations, taken together, may have exacerbated Petitioners' misgivings.
11 That said, misgivings are not proof that the Ordinance violates the "no net loss" provisions of
12 SMA. Petitioners' have fundamentally misunderstood the standard of proof needed to
13 prevail in this challenge.
14

15
16 **The Board finds** that Petitioners have not met their burden to show that the SMP will
17 result in a net loss to ecological function in the Lake Burien shoreline.

18 **Issues 2, 4, and 6 are dismissed.**
19

20 **Issue 3 Provisions of SMP pertaining to Lake Burien Shoreline inconsistent with**
21 **EIS?**

22 Petitioners' briefs do not address how the EIS is inconsistent. Petitioners having
23 failed to brief this Issue, the argument is deemed abandoned.⁸⁶
24

25 **Issue 3 is dismissed.**
26

27 **Issue 5 Public Process**

28 Petitioners complain that they were denied participation in the process that led up to
29 the adoption of the challenged Ordinance.⁸⁷ They seem particularly distressed by being
30 denied the ability to be part of, or observe, the deliberations of the Shoreline Working Group
31

32 ⁸⁶ WAC 242-03-590(1) reads in pertinent part: "... Failure by such a party to brief an issue shall constitute abandonment of the unbrieffed issue."

⁸⁷ Petitioners' Prehearing Brief at 12-16.

1 (SWG), and complain that the members of the SWG were not all residents of shoreline
2 property In Burien. An Assistant Attorney General email to petitioner Edgar stated that
3 “Advisory committees may be subject to the Open Public Meeting Act where they act on
4 behalf of the Burien City Council or take public comment or testimony to assist the city
5 council to develop a SMP.”⁸⁸ Burien responds that the Petitioners have provided no
6 authority that the existence, make-up, or closed meetings of the SWG violate GMA or SMA
7 public participation requirements.⁸⁹

8
9 After Ecology forwarded notice of approval of its SMP the City on April 22, 2011,
10 including both required and recommended changes, Burien initially disputed at least one
11 required change in a May 25, 2011 letter. At Ecology’s suggestion, the City withdrew its May
12 25, 2011 letter and the SWG, consisting of four citizens and a councilmember, began
13 meeting regularly and conferring with Ecology.⁹⁰ The SWG was appointed by the City
14 Council but did not conduct its meetings in public or publish minutes.⁹¹ Ecology suggests
15 that the SWG was formed particularly to address issues regarding marine shorelines⁹² and
16 that most of the 18-month process was devoted to developing alternative marine shoreline
17 buffers.⁹³ The City held a public hearing on Ordinance 518, a revised SMP incorporating the
18 changes made by the SWG, on May 6, 2013, and subsequently adopted the Ordinance on
19 June 10, 2013.
20

21 Petitioners also complain that the City failed to properly notice the May 6, 2013 public
22 hearing on the revised SMP. This was the only public hearing prior to adoption of the SMP
23 on June 10, 2013. In response, the City asserts that the meeting was not only properly
24 noticed, but that each of the Petitioners was sent advance notice of the hearing by mail.⁹⁴
25 Burien further contends that the Petitioners “continuously and actively participated in the
26
27
28

29 ⁸⁸ Burien Ex. 492, at 1. Emphasis added

30 ⁸⁹ Respondent City of Burien’s Prehearing Brief, at 21.

31 ⁹⁰ ECY Ex. 032: Attachment A: Findings and Conclusions – Revised, at 2.

32 ⁹¹ Burien Exhibit 492 at 1.

⁹² Petitioners’ Prehearing Brief at 15; ECY Ex. 032: Attachment A: Findings and Conclusions – Revised, at 2.

⁹³ ECY Ex. 032: Attachment A: Findings and Conclusions - Revised at 2.

⁹⁴ Respondent City of Burien’s Prehearing Brief at 21; Burien’s Motion to Supplement, Ex. A.

1 City's SMP update,"⁹⁵ documenting receipt of 35 written communications, 3 written public
2 comments, 25 oral public comments, 5 instances of oral public testimony at public hearings,
3 attendance at 5 of 9 Shoreline Advisory Committee meetings going back to 2009,
4 attendance at 2 (of 2) open houses, attendance at 4 Planning Commission meetings,
5 attendance at 1 (of 2) public forums, and attendance at 3 (of 3) public hearings from or by 1
6 or more of the Petitioners.⁹⁶
7

8 **Board discussion and analysis:**
9

10 The Open Public Meetings Act, chapter 42.30 RCW, is beyond the jurisdiction of this
11 Board,⁹⁷ but the Board notes that it finds no evidence in the Record that the SWG acted on
12 behalf of the Council or took public comment to assist in developing the SMP.

13 WAC 173-26-201(3)(b)(i) defines the public participation requirements with which
14 local government shall comply:

15 (i) Participation requirements. Local government shall comply with the
16 provisions of RCW 90.58.130 which states:

17 "To insure that all persons and entities having an interest in the guidelines
18 and master programs developed under this chapter are provided with a full
19 opportunity for involvement in both their development and implementation,
20 the department and local governments shall:

21 (1) Make reasonable efforts to inform the people of the state about the
22 shoreline management program of this chapter and in the performance of the
23 responsibilities provided in this chapter, shall not only invite but actively
24 encourage participation by all persons and private groups and entities
25 showing an interest in shoreline management programs of this chapter; and

26 (2) Invite and encourage participation by all agencies of federal, state, and
27 local government, including municipal and public corporations, having
28 interests or responsibilities relating to the shorelines of the state. State and
29 local agencies are directed to participate fully to insure that their interests are
30 fully considered by the department and local governments."

31 WAC 173-26-100 additionally states:
32

⁹⁵ Respondent City of Burien's Prehearing Brief, at 20.

⁹⁶ Respondent City of Burien's Prehearing Brief, at 89.

⁹⁷ *Friends of the San Juans v. San Juan County*, GMHB Case no. 13-2-0012c, Final Decision and Order (Sep. 6, 2013), at 15-16.

At a minimum, local government shall:

- (1) Conduct at least one public hearing to consider the draft proposal;
- (2) Publish notice of the hearing in one or more newspapers of general circulation in the area in which the hearing is to be held. The notice shall include:
 - (a) Reference to the authority(s) under which the action(s) is proposed;
 - (b) A statement or summary of the proposed changes to the master program;
 - (c) The date, time, and location of the hearing, and the manner in which interested persons may present their views; and
 - (d) Reference to the availability of the draft proposal for public inspection at the local government office or upon request . . .

The only allegation that the City failed to meet statutory public participation requirements relating to the adoption of its revised SMP is Petitioner's contention that the City failed to properly notice the May 6, 2013 public hearing on the revised Ordinance.⁹⁸ The City has provided persuasive evidence to refute Petitioners' contention.⁹⁹ The Board empathizes with Petitioners' frustration that the short time frame between hearing the revised SMP and its adoption provided the public with minimal time to understand or respond to all the provisions. However, the statute does not require a longer period.

The Board finds that Petitioners have not met their burden to show that Burien failed to comply with the public participation provisions of the SMA.

Issue 5 is dismissed.

VI. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the Growth Management Act, the Shoreline Management Act and applicable guidelines, prior Board orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board **ORDERS** that GMHB Case 13-3-0012 **be dismissed**.

⁹⁸ Petitioners' Prehearing Brief, at 16.

⁹⁹ Burien's Motion to Supplement, Ex. A.

1 SO ORDERED this 16th day of June, 2014.

2
3 _____
4 Cheryl Pflug, Board Member

5
6 _____
7 Margaret Pageler, Board Member

8
9 _____
10 Charles Mosher, Board Member

11
12 **Note: This is a final decision and order of the Growth Management Hearings Board**
13 **issued pursuant to RCW 36.70A.300.¹⁰⁰**
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29 _____
30 ¹⁰⁰ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
31 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.
32 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days
as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent
upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings
Board is not authorized to provide legal advice.

Attachment A:

Legal issues as presented in Case No. 13-3-0012 are as follows:

1. For all the shorelines – Do the Burien Shoreline Master Program (SMP) and its pertinent maps relating to land use, density, intensity for Lake Burien and the other Burien shorelines, exhibit inconsistencies among the text, supporting technical documents, pertinent maps and exhibit additional inconsistencies with other Comprehensive Plan elements, failing to satisfy the “consistency” requirements of:

- RCW 36.70A.070 (opening paragraph)
- RCW 90.58.080 subs. (1), subs. (4b)
- RCW 90.58.100 (3) (e), (f)
- RCW 90.58.340
- WAC 173-22-055
- WAC 173-26-191 (1) (e)
- WAC 173-26-211 (2) (a), (b), (c)
- WAC 365-196-500 ?

2. For the Lake Burien shoreline – Do Burien’s SMP provisions establishing buffers for the portions of Lake Burien’s shoreline having critical areas, and also for the critical areas surrounding Lake Burien, demonstrate consideration, use of, and a reliance upon “Best Available Science” or “current science” pertaining to “no net loss”, and are these provisions sufficient to satisfy:

- RCW 36.70A.050
- RCW 36.70A. 170 subs. (1) (d), subs. (2)
- RCW 90.58.100 subs. (1) (b), (c), (d), (e), (f), subs. (2) (f), subs. (3)
- WAC 173-26-191 (1) (d)
- WAC 173-26-201 subs. (2) (a), (c), (e), (f), subs. (3) (c), (d), (e)
- WAC 173-26-211 subs. (2) (a), (b), subs. (3), subs. (5) (f)
- WAC 173-26-221 subs. (2), subs. (6)
- WAC 365-195-900 (2)

- 1 - WAC 365-195-905
- 2 - WAC 365-195-910
- 3 - WAC 365-195-915 subs. (1) (a), (b), subs. (1) (c) (i), (ii), (iii)
- 4 - WAC 365-195-920
- 5 - WAC 365-195-925 (1) ?

6 3. For the Lake Burien shoreline – Are the provisions of the Burien SMP regarding
7 land use, density, buffers on and near to the shoreline of Lake Burien inconsistent with and
8 unsupported by the Environmental Impact Statement (EIS) that was purportedly relied upon
9 in developing and approving that SMP per:

- 11 - RCW 36.70A.070 (opening paragraph)
- 12 - RCW 90.58.080 subs. (1), subs. (4b)
- 13 - RCW 90.58.340
- 14 - WAC 173-26-211 (2) (a), (b), (c)
- 15 - WAC 365-195-905
- 16 - WAC 365-195-910
- 17 - WAC 365-195-915
- 18 - WAC 365-195-920
- 19 - WAC 365-196-500 ?

21 4. For all the shorelines – Does the “alternative strategy” in the Burien SMP (section
22 20.30.050 Figures 5 & 6), including the prescriptive worksheet (section 20.30.055 Figure 7),
23 Appendix 1, Appendix 1A, Appendix 2, Appendix 2A, Appendix 4, Appendix 4A, Appendix 5
24 and Appendix X, fail to comply with the “no net loss” requirements for the shoreline buffers
25 and impact mitigation because they fail to comply with Best Available Science (BAS) or
26 current science per:

- 28 - WAC 173-26-020 (8)
- 29 - WAC 173-26-100
- 30 - WAC 173-26-201 subs. (2) (a), (c), subs. (3)
- 31 - WAC 365-190-080

- 1 - WAC 365-195-905
- 2 - WAC 365-195-915
- 3 - WAC 365-195-920
- 4 - WAC 365-196-830 ?

5 5. For all the shorelines – Did the Burien SMP process by denying citizen meeting
6 information, denying meaningful participation/membership in meetings to duly examine the
7 circumstances of Lake Burien and the scientific data bearing on land use, density and
8 intensity, buffers, dimensional standards, impervious surfaces, and denying observation of
9 SMP meetings/minutes, fail to comply and make reasonable efforts to inform, fully involve,
10 and actively encourage early and continuous participation by all persons, private groups and
11 entities showing interest in the Burien SMP as required by:
12

- 13 - RCW 36.70A.020 (11)
- 14 - RCW 36.70A.035 subs. (1), subs. (2) (a)
- 15 - RCW 90.58.100 (1)
- 16 - RCW 90.58.130 1st paragraph and subs. (1)
- 17 - WAC 173-26-090 2nd & 3rd paragraphs
- 18 - WAC 173-26-201 subs. (3) (b) (i) ?

19 6. For the Lake Burien Shoreline - Did the Burien SMP fail to comply with the “no net
20 loss” standard in its policies, regulations, planning guides and SMP technical documents for
21 the Lake Burien shoreline, critical areas and wildlife habitat when it failed to accurately
22 document: deteriorating water quality, storm water problems, lack of existing and planned
23 public facilities to adequately support the current or future density, land use density and
24 intensity, impervious surface, surface water runoff and nonpoint pollution issues per:
25

- 26 - WAC 173-26-201 subs. (2) (a), (b) (c), subs. (3)(c), (d) (i), (ii), (iii), (vii), (viii), (e), (f)
- 27 - WAC 173-26-211 (2)
- 28 - WAC 173-26-221 subs. (2) (a), (b) (iv), subs. (3), (5), (6)
- 29 - WAC 173-26-241 (3) (j)
- 30 - WAC 173-201A-010 (1)

- 1 - WAC 173-201A-200 subs. (1) (d), (e), (f), (g), subs. (2) (b)
- 2 - WAC 173-201A-260 (3) (b)
- 3 - WAC 365-195-920?
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